

HELD AT MBABANE

CASE NO: 54/88

In the matter between:

MALUNGISA MTHETHWA

Applicant

VS

WATERFORD KA-MHLABA SCHOOL

Respondent

CORAM:

HASSANALI President

MR FLYNN

for Applicant

MR P SHILUBANE

for Respondent

MR MATSEBULA & MR MOKGOKONG Assessors

AWARD

(Delivered on 3rd June, 1989)

HASSANALI, P

In this matter, the Applicant is claiming from the Respondent School the following for his unfair termination -

Compensation for 6 months	5 640-00
Provident Fund	6 408-64
Pay in lieu of leave	1 620-00
Notice Pay	940-00
Additional Notice Pay	760-00
Severance Allowance	1 900-00

The Applicant was employed by the Waterford School as a Book-keeper and his duties were clearly spelt out in his letter of appointment dated 16/2/1981 (Ex.F). One of his main duties was the preparation of the Bank Reconciliation Statement which he was expected to have ready at the end of each month.

He served the School for a little over 6 years and then resigned his post by his letter dated 11/6/1987 (Ex. A) He stated that he took this step because of the unreasonable conduct of Mr Matis, the Bursar his immediate superior. Mr Matis strongly denied this.

Therefore the point in issue is whether the applicant resigned of his own accord or whether was he forced to do so on account of the circumstances created by Mr Matis. In order to arrive at a just decision, it is

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necessary for me to go into the circumstances which led to his resignation.

In March, 1986, Mr Matis took over as Bursar of the School from one Mr Vriend, and the applicant worked directly under him. On 8/6/87, Mr Matis in the course of this duties discovered that the

applicant had failed to attend to the Bank Reconciliation Statements for the months of April and May, 1987 and he was told that they should be ready by 12/6/87. A warning was also given that failure to do so would result in his losing his job. The applicant admitted to the non-preparation of the statements but said that the delay in doing so were due to the following reasons -

- (a) that the documents were not available in time
- (b) that the cheques taken at times by the Bursar to the Headmaster for signature were not returned to him in time.

These he said were results of the changes effected in the work system after Mr Matis took over as Bursar.

I fail to comprehend his argument on this point. If a new system had been in operation since March 1986 and if the applicant could have worked out the monthly statements without complaint up to March, 1987, why was it that he failed to prepare the two statements for April and May 1987? As such, it was not the new system that delayed the preparation of the statements. I therefore reject his argument on this point.

The Applicant also took up the point that he was given only 3 days to complete the statements which period according to him was unreasonable. I do not see anything unreasonable in this. He was expected to have the statements ready by the end of each month. Had he done his job, the period of time which he says unreasonable would not have risen at all.

After the applicant's resignation, Mr Matis took upon himself the preparation of the Statements for the said two months, in the course of which he discovered that a sum of E8 646.53 had not been banked (Ex.K). This shortage was later confirmed by the School Auditors (Ex. J). The Applicant however attributed this shortage to the new office system but

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here is no evidence that he ever complained about it in any form to the Bursar. It was also not the first occasion where the applicant was involved in a shortage of this nature. In April, 1984 he was accused of taking a sum of E262/50 without permission from the school cash float thereby causing a shortage for which he was severely warned (Ex.G). He was also warned on subsequent occasions for neglect of work and general behaviour (Ex. H and I).

It appears to me that the shortage of E.8646/53 was the creation of the applicant himself. I am of the view that the non-preparation of the statements for the months of April and May 1987 could have been due to the fact that he may have found it impossible to balance the accounts on account of the shortage.

I now turn to the crucial question whether the applicant resigned of his own accord or was forced to do so by Mr Matis.

The Applicant has submitted that, had Mr Matis not threatened him with dismissal, he would not have tendered his resignation. Mr Matis on the other hand maintained that he only threatened him with dismissal if he failed to hand over the said statements by 12/6/87. In my view for an employee's resignation to constitute dismissal, the conduct of the employer must be one that should amount to a fundamental breach of contract.

When Mr Matis discovered that the conciliation statements for April and May 1987 were not ready, he instructed the Applicant who was responsible for their preparation, to have them ready by 12th June 1987. He also, in the course of his duty mentioned that if he failed to do so, he could lose his job.

Hence it is difficult to see how the issue of this ultimatum could constitute a breach of contract. In my view the instruction issued by Mr Matis to the Applicant with warning of dismissal, was one he was lawfully entitled to issue. If the Applicant chose to ignore it and resign, this certainly would not constitute dismissal.

Taking into consideration all the facts in this case, it seems to me that the applicant resigned when he found -

- (a) that he would not be able to balance the accounts of the school, due to the shortage of E8 646.54
- (b) that he might be called upon to explain this shortage.

Therefore I hold that Applicant resigned of his own accord. In the circumstances I dismiss his application.

This decision is entered as an award of this Court. My Assessors agree with my decision.

j.a.hassanali,

president